

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:20-CV-00504-FDW-DSC

CPI SECURITY SYSTEMS, INC.

Plaintiff,

v.

VIVINT SMART HOME, INC.
f/k/a MOSAIC ACQUISITION CORP.;
LEGACY VIVINT SMART HOME, INC.
f/k/a VIVINT SMART HOME, INC.

Defendants.

PLAINTIFF CPI SECURITY SYSTEMS, INC.’S MOTION TO AMEND THE JUDGMENT TO ADD PRE-JUDGMENT AND POST-JUDGMENT INTEREST

Plaintiff CPI Security Systems, Inc. (“CPI”) hereby respectfully moves the Court to amend the judgment entered in favor of CPI to add pre-judgment and post-judgment interest pursuant to Federal Rule of Civil Procedure 59(e) and shows the Court as follows:

1. On February 17, 2023, United States District Court Clerk Frank G. Johns entered judgment in favor of CPI in accordance with the jury’s February 17, 2023 verdict. [DE 148, 149.]

2. The total amount of the judgment was \$189,700,000 broken down as follows:

- Issue 1 – Lanham Act: \$5,400,000
- Issue 2 – Common Law Unfair Competition: \$13,500,000
- Issue 3 – Tortious Interference with Contracts: \$1,500,000
- Issue 4 – North Carolina Unfair and Deceptive Trade Practices Act: \$29,300,000

- Issue 5 –Punitive Damages: \$140,000,000

[DE 148.]

3. This judgment did not include pre-judgment or post-judgment interest.

CPI seeks to amend the judgment to add pre-judgment and post-judgment interest.

PRE-JUDGMENT INTEREST

4. “The amount of prejudgment interest to be awarded on a federal claim is controlled by federal law. Absent a statutory mandate, the rate of prejudgment interest to be awarded is matter left to the discretion of the Court. In determining the rate of such interest, it is proper for the Court to look to state statutory interest rates.” *B.P. v. Charlotte-Mecklenburg Bd. of Educ.*, No. CIV. 3:06CV445, 2010 WL 1418334, at *9 (W.D.N.C. Apr. 2, 2010) (internal citations omitted).

5. The Lanham Act does not establish a statutory rate of pre-judgment interest. CPI’s remaining claims were state law claims.

6. The statutory rate of interest in North Carolina is 8% per year. *See* N.C. Gen. Stat. Ann. § 24-1.

7. This Court has found the North Carolina state statutory rate of interest of 8% to be an appropriate and reasonable rate for pre-judgment interest. *See, e.g.*, *B.P.*, 2010 WL 1418334, at *9. Accordingly, CPI asks this Court to apply a pre-judgment interest rate of 8%.

8. CPI seeks pre-judgment interest only on the compensatory award of \$49,700,000 and not on the punitive damages award of \$140,000,000, in accordance with the law in the Fourth Circuit. *See Vanwyk Textile Sys., B.V. v. Zimmer Mach.*

Am., Inc., 994 F. Supp. 350, 390 (W.D.N.C. 1997); *see also M-Tek Kiosk, Inc. v. Clayton*, No. 1:15CV886, 2017 WL 1082430, at *5 (M.D.N.C. Mar. 22, 2017).

9. Under North Carolina law, in all actions other than breach of contract actions, pre-judgment interest begins accruing when the action is commenced. *See* N.C. Gen. Stat. Ann. § 24-5(b). Accordingly, CPI seeks pre-judgment interest from the date CPI filed the Complaint, September 11, 2020, to the date the judgment was entered, February 17, 2023.

10. The amount of interest accrued per day on the compensatory award of \$49,700,000 at a pre-judgment interest rate of 8% is \$10,893.15. 889 days elapsed between September 11, 2020 and February 17, 2023. \$10,893.15 per day multiplied by 889 days yields a total pre-judgment interest amount of \$9,684,010.35.

11. Accordingly, CPI respectfully asks this Court to amend the judgment to add pre-judgment interest in the amount of \$9,684,010.35.

POST-JUDGMENT INTEREST

12. “Federal law mandates the awarding of post-judgment interest.” *Quesinberry v. Life Ins. Co. of N. Am.*, 987 F.2d 1017, 1031 (4th Cir. 1993) (citing 28 U.S.C. § 1961); *see also PharMerica E., LLC v. Healthlink of Virginia Shores, LLC*, No. 2:19-CV-00456, 2020 WL 877983, at *3 (E.D. Va. Feb. 20, 2020). “[T]he purpose of postjudgment interest is to compensate the successful plaintiff for being deprived of compensation for the loss from the time between the ascertainment of the damage and the payment by the defendant.” *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835–36 (1990) (internal citations omitted).

13. Post-judgment interest in a federal lawsuit is governed by 28 U.S.C. § 1961. *See Forest Sales Corp. v. Bedingfield*, 881 F.2d 111, 112 (4th Cir. 1989). The post-judgment interest rate pursuant to 28 U.S.C. § 1961(a) is “a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.” 28 U.S.C. § 1961(a). The rate for the week ending February 10, 2023, which is the calendar week preceding the judgment, is 4.87%.¹

14. Accordingly, CPI asks this Court to apply a post-judgment interest rate of 4.87%.

15. CPI is entitled to post-judgment interest on the entire amount of the \$189,700,000 judgment, any pre-judgment interest awarded, any attorney’s fees awarded, and any costs awarded. *See Quesinberry*, 987 F.2d at 1031 (“Awarding post-judgment interest on the entire amount the court award[s] . . . including pre-judgment interest, most closely comports with the purpose of post-judgment interest articulated by the Supreme Court.”); *Warren v. Main Indus., Inc.*, No. 4:16-CV-181, 2018 WL 10562398, at *3 (E.D. Va. Sept. 18, 2018) (“[T]he Fourth Circuit has stated that awarding post-judgment interest on the entire [damages] amount . . . , most closely comports with the purpose of post-judgment interest articulated by the Supreme Court.”); *Littlejohn v. Null Mfg. Co.*, 619 F. Supp. 149, 151 (W.D.N.C. 1985) (recognizing that “post-judgment interest was due on the attorney’s fees award”).

¹ <https://www.cash.uscourts.gov/post-judgment-interest-rates-2023>

WHEREFORE, for the foregoing reasons, CPI requests that the judgment in this case be amended to add pre-judgment interest of \$9,684,010.35, making the total amount of the judgment \$199,384,010.35. CPI further requests this Court award CPI post-judgment interest at a rate of 4.87%, computed daily and compounded annually, commencing February 17, 2023, until the judgment is fully satisfied by Defendants. To the extent the Court awards additional attorney's fees and costs, CPI requests that the Court impose the post-judgment interest on the entirety of the final award.

Dated: March 7, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 7th day of March, 2023, I served the foregoing document by ECF upon the following:

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